

Preface to the Cornell Paperbacks Edition

When I began researching this book in the early 1990s, I perceived little interest in religious schools within the legal and academic communities. State education officials, too, appeared content to ignore these schools, resigned to leaving the schools unregulated despite their awareness that many such schools were failing to provide their students an adequate education. In that climate of neglect, I believed it would be quite difficult even to spark interest in the topic of regulating religious and other private schools, let alone to convince anyone that justice required states to do so. For that reason primarily, I chose to emphasize in the first chapter of the book evidence of what, from a secular perspective, are the worst practices in Catholic and fundamentalist Christian schools, rather than striving for a balanced presentation of their strengths and weaknesses. Some reviewers of the book who support religious schooling have faulted it for the lack of balance.

I believed then, however, and still believe that children are best served by our striving to do the best we can for them, to eliminate any and all child-rearing practices that we have sufficient reason to deem harmful, rather than resting content with a finding that is not all bad. Surely there can be disagreement about which religiously motivated schooling practices are, from a secular perspective, harmful. (I know of no one who contends that absolutely none are.) My identification of practices as harmful is thus meant to be the beginning of a conversation about that issue, hardly definitive or conclusive. But it is illogical, and arguably irresponsible, to reject the normative conclusions of the book simply on the basis that the empirical presentation is not balanced.

Now in 2001, tremendous attention is being paid to religious schools. The reason for the attention is not, unfortunately, any heightened sensitivity to the needs and rights of children attending those schools. It is not a hue and cry about the dangers for some children of leaving their schools unregulated. The reason is instead the mounting public and political support, even demand, for large-scale state financial support for religious and other private schools. School vouchers are increasingly viewed as the solution to public school failures and as the best way to protect rights of parental and religious freedom.

Insofar as state support for religious and other private schools is championed as good education policy, as a means for ensuring a good education for children who would otherwise not receive one, one might expect closer public scrutiny of the private entities to which state education money would flow. One might expect public demand for close investigation, careful selection, and ongoing supervision of schools that would receive voucher money. After all, state education budgets are extremely tight, so we cannot afford to be throwing education dollars away on inadequate private schools anymore than we can afford to throw them away on inadequate public schools. Yet there has been little or no public demand of that sort. Any insistence that conditions be attached to vouchers has been limited to superficialities such as admissions policies and the ability of parents to keep their children out of religion classes. While public school accountability is on the lips of every politician, private school accountability is still largely an alien concept.

A number of things might explain this neglect of private school practices and effects. One explanation is that the most prominent current voucher programs are limited in scope to areas where public schools are at their worst, and the public might justifiably assume that any private school could not possibly be worse than those public schools. Another explanation is widespread misconception about what studies have shown regarding the educational performance of religious schools. Studies of standardized tests scores in the 1970s among students in Catholic schools and public schools continue to have a surprisingly great influence and have somehow created a public perception that *all* private schools *today* are at least as good as any public schools. A third explanation is that parental choice in children's education is still seen as an entitlement, regardless of what sort of choices parents make, and now is seen as an entitlement that should in no way be compromised by state spending on education.

In my view, this failure to scrutinize private school practices should not, and in fact will not for long, continue to be a characteristic of the voucher debate. For the moment, when voucher programs are relatively new and limited in scope, and when litigation surrounding them continues to focus on superficialities such as admissions policies, the public remains largely unaware of the nature of the schools being subsidized. But as these programs, which impose few meaningful conditions on receipt of public funds, grow in scope, opponents of the programs will become increasingly able and motivated to expose schooling practices that many people will find troubling, practices of the sort I discuss in Chapter 1 of this book. They will create public awareness that not all private schools are good schools and that some educationally inadequate schooling has been overlooked because of the misplaced focus on average performance in one segment of the private school universe (that is, Catholic schools).

Eventually voucher opponents will mount legal challenges that do not rest solely on an argument that state financing of religious schools is facially invalid, inherently unconstitutional, an argument that is likely ultimately to fail, given the direction of Supreme Court jurisprudence today. Instead, they will begin to advance as-applied challenges, arguing that funding of certain specific religious schools is unconstitutional because of the particular educational practices of those schools. And those challenges, I predict, will succeed. This will finally force states to do what, as I show in Chapter 2 of the book, they have been unwilling to do for many decades. States will be forced to impose substantive regulations on at least those religious schools that wish to receive state funding. In a funding context, parents' rights will not have the legal force they do in non-funding contexts, and they will lose in a contest with the strictures of the Establishment Clause.

For this reason, I support the school voucher movement, and this will likely come as a surprise to anyone who has read this book. I support it because a voucher program that conditions schools' participation on their satisfying robust academic standards seems to me the only politically feasible way to effect the kind of change I recommend, the only way to advance the educational interests of the children who attend religious schools. I am hopeful that those who read this book will come to agree with me that the state has an obligation to protect the developmental interests of children whose parents place them in private schools. Once one accepts that proposition, the voucher debate takes on a new light.

Because current voucher programs do not require recipients to demonstrate that they provide a good education, however, the normative analysis that makes up most of this book could provide strong and heretofore overlooked support for the anti-voucher position. Even in the absence of such manifest and large-scale state support for private schooling as vouchers constitute, it is unconscionable that private schools are unaccountable for how they treat children and for what they provide or fail to provide by way of instruction. It is even more unconscionable for states to fund schools that they do not hold accountable, when there is sufficient evidence to suggest that some of the schools vouchers would fund are grossly inadequate academically and treat children in ways the state deems harmful. If parents' rights and rights of cultural minorities cannot justify the current state of neglect in a no-monetary-aid environment, they certainly cannot justify neglect of children in religious schools when the state is providing substantial monetary aid to those schools.

My primary aim in writing this book was not, however, to present an indictment of any religious schools, nor to argue for any particular policy or legal action concerning such schools. My primary aim was to expose the adult-centered nature of thinking about policy and legal questions relating to child rearing in general and to demonstrate that adult-centered thinking is morally and legally inappropriate. I hope that some readers will be led to consider whether a child-centered perspective—that is, one that gives priority to children's interests and rights—is the better one from which to view conflicts over how children are raised. I believe that it is, and I have used the context of regulating private schools simply to illustrate how such a perspective might require substantial changes in our legal regime and our political practices.

In making the case for a child-centered approach to child-rearing issues, I directly attack the legal doctrine and moral concept of parents' rights. Some have faulted me for being unsympathetic to parents. At no point, however, do I deny that parents have interests at stake in major decisions concerning their children's lives, such as their children's education. Rather, I argue that those interests are objectively much less important than the interests their children have at stake, so that parents' interests must take a back seat and should never be satisfied at the expense of their children's interests. In other words, children's interests trump. I know of no one who explicitly denies this. The critical question, then, is not whether parents' interests have been duly recognized but how to determine what children's interests are.

Most parents, I suspect, view things this way. If they object to state interference with their child-rearing choices, it is not principally because they regard such interference as harming themselves but because they regard it as harming their children. The crux of the matter is disagreement over children's interests. The essence of this book is an analysis of how the legal system should resolve that disagreement when religious belief shapes parents' views about their children's interests—that is, when the conflict is between parents' religious perspective on their children's welfare and the state's necessarily secular perspective on the children's welfare. Readers who engage in this deeper analysis, whatever their own attitudes toward religious schools might be, will find, I hope, reason to reconsider basic assumptions and ways of thinking about children's lives.